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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 565

JACK WARREN BRADLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 46-55) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 29, 1954 (R. 56). The petition for a writ of certiorari was filed on January 26, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was guilty of refusing to submit to induction into the armed forces although not given the opportunity to take the ceremonial one step forward, where he signed a statement of refusal and testified that, even if given that opportunity, he would have refused induction.

2. Whether there was a basis in fact for the decision of the Selective Service Appeal Board denying petitioner's claim for exemption as a conscientious objector and placing him in classification I-A (available for military service).

3. Whether procedural due process required that petitioner be given further notice and opportunity to support his claim for classification as a conscientious objector after the Department of Justice had made its recommendation to the appeal board.

STATUTES INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior

to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Depart-

ment of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

Section 12(a) [50 U.S.C. App. 462(a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to

> this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of California for refusal to submit to induction into the armed forces (R. 3-4, 5-7, 35). He was sentenced to 18 months' imprisonment (R. 11-12). On appeal (R. 13), the judgment was unanimously affirmed (R. 56).

Pertinent facts from petitioner's selective service file, which was introduced in evidence as Government Exhibit 1 (R. 16), are as follows:

Petitioner registered at his local board at Long Beach, California, on September 20, 1950 (F. 2).[1] In his classification questionnaire received on October 26, 1951, he stated that he had been a minister in Jehovah's Witnesses since March 16, 1947; that his occupation was repairing rails and distributing tie plates for the Great Northern Railroad. He signed Series XIV stating he was conscientiously opposed to participation in war in any form. (F. 6, 8, 9, 12.) On the same date, October 26, 1951, petitioner filed his SSS Form No. 150 for conscientious objectors in which he claimed exemption from both combatant and noncombatant service, and

[1] "F." refers to petitioner's selective service file, Gov. Ex. 1.

stated, "The nature of my belief is not to take part in worldly affairs. The duty of my belief is to serve God rather than the country in which I live" (F. 18). He stated that he relied upon his mother for religious guidance, and had received training from Jehovah's Witnesses beginning in 1940, but that he had never given public expression to his conscientious objector claims (F. 19). He explained that in his religion, "we do not participate in any kind of war, whether combat or noncombat" (F. 22). He left blank the space under questions as to the circumstances under which he believed in the use of force, and the name and address of the pastor of his church (F. 19, 22).

On January 22, 1952, petitioner was notified that he had been classified I-A (available for military service) by his local board (F. 13, 27). In a letter of January 30, 1952, petitioner submitted a letter quoting passages from the Bible in which he requested a personal appearance before the board (F. 30-34). Petitioner also forwarded a letter from a company servant of Jehovah's Witnesses, stating that although he had "not been acquainted with [petitioner] very long," petitioner was active with his preaching and attended religious meetings regularly (F. 28).

After a personal appearance before the board petitioner was again classified I-A (F. 13, 39).

On February 18, 1952, petitioner's file was forwarded to the appeal board which determined that he should not be classified in either I-A-O (conscientious objector available for noncombatant military

service only) or I-O (conscientious objector available for civilian work contributing to the maintenance of the national health, safety or interest). The file was then forwarded to the Department of Justice for an advisory recommendation. (F. 13, 43.) On August 7, 1952, petitioner was given a physical examination and found acceptable for induction (F. 45-46).

In a letter dated March 19, 1953, from the Department of Justice to the appeal board (F. 48-49), it was recommended that petitioner's claim for exemption from both combatant and noncombatant training and service should not be sustained. This letter noted that the F.B.I. investigation revealed that former teachers said petitioner had a "good conduct record"; that neighbors believed petitioner was "acting in good faith, although conscientious objector views were never discussed"; and that petitioner's mother stated he "never attended services regularly until 1951 and * * * was not yet baptized at the time of the interview" (F. 48). The letter then continued (F. 49):

> Registrant [petitioner] told the Hearing Officer that he was an only child and that his mother had instructed him in his religion. He alleged that he had been an active Jehovah's Witness for a year. He will fight in self defense but cannot desert God's army. He further remarked that his conscientious objector position was his own philosophy. A witness attested to his good character and recent religious activity. The Hearing Officer concluded

that registrant was not a conscientious objector by reason of any deep-rooted religious conviction, but that, if his claim was sincere, it was only an outgrowth of registrant's personal philosophy. He recommended a I-A classification.

On April 9, 1953, the appeal board by a 3 to 0 vote classified petitioner I-A, and he was ordered to report for induction on May 18, 1953 (F. 13, 50, 51). On that date petitioner signed in his own handwriting the following statement witnessed by an army captain and a master sergeant, "I refuse to be inducted into the Armed Services of the United States" (F. 53). Thereafter the United States Attorney was notified of petitioner's refusal to be inducted and his indictment, trial and conviction followed (F. 13, 52, 54-55).

At the trial petitioner testified on his own behalf as follows:

At the induction center, after he had started to take his physical examination, he was asked if he were a conscientious objector and replied that he was. After petitioner was ordered upstairs, a sergeant told him the penalty for not going into the service and requested that he write and sign a statement that he refused to serve in the United States Army. Petitioner testified that no one asked him to take one step forward to indicate that he was being inducted into service. (R. 25-26.) When asked if he would have taken one step forward in the induction process if given such an opportunity, he replied, "No, I would not have" (R. 32-33).

Petitioner testified that at the hearing he was permitted to explain everything he "wanted to explain," and that the hearing officer afforded him an opportunity to state his views fully for about 15 or 20 minutes (R. 28-29, 31). Petitioner stated he was sure that the hearing officer did not say that petitioner's views as expressed were not those of religion but were his own personal philosophy (R. 27-28). Offers of proof by the witness that he was not given copies of the hearing officer's report and the Attorney General's recommendation to the appeal board before the board's action were refused by the trial court (R. 29). Petitioner testified that, when questioned about using force in self-defense, he told the hearing officer that Jehovah's Witnesses did believe in using force and that they would defend their brothers in trouble (R. 29-30).

ARGUMENT

1. There is no merit in petitioner's technical contention that since he was not requested to take the ceremonial one step forward for induction in accordance with Army Special Regulation No. 615-180-1, paragraphs 23 and 27 (see R. 49), he could not be guilty of refusing to submit to induction (Pet. 9-10).

In *Billings* v. *Truesdell*, 321 U.S. 542, involving the issue of whether the selectee had actually been inducted into the army so as to subject him to court-martial jurisdiction, it was held that in view of his refusal voluntarily to undergo the induction ceremony he remained subject to civilian authority alone. Here there is no doubt that petitioner refused to be inducted, and his case was so treated.

Petitioner had been found acceptable for service, and the only step remaining was his induction or refusal. Warned of the potential penalty, he nevertheless voluntarily and understandingly signed a statement in his own handwriting showing his unqualified refusal to be inducted. Cf. *United States* v. *Mansavage*, 178 F. 2d 812, 816, 818 (C.A. 7), certiorari denied, 339 U.S. 931. At the trial he admitted that, even if afforded the opportunity of taking the ceremonial one step forward for submission to induction, he would not have done so (R. 32-33); and he neither alleges nor shows any prejudice resulting from the absence of an opportunity for stepping forward. The law does not require the doing of useless acts, and courts in selective service cases have disregarded procedural irregularities or omissions not resulting in prejudice to the selectee, *e.g.*, *United States* v. *Hagaman*, 213 F. 2d 86, 91 (C.A. 3); *Martin* v. *United States*, 190 F. 2d 775, 779 (C.A. 4), certiorari denied, 342 U.S. 872; *Atkins* v. *United States*, 204 F. 2d 269, 271 (C.A. 10), certiorari denied, 346 U.S. 818.

2. Contrary to petitioner's contention (Pet. 7-8), there was a basis in fact for th appeal board's I-A classification. Significantly, petitioner's active interest as a Jehovah's Witness arose almost simultaneously with his I-A classification. As shown in the Department of Justice letter of recommendation, petitioner's mother stated that he "never attended services regularly until 1951" (F. 48). And in his letter of January 30, 1952, requesting a personal appearance before the local board after his original I-A classification, he wrote, "Now I am as-

sociated with Jehovah's Witnesses organization, and have been active as a witness several months" (F. 32). Although it has been shown in the many cases before this Court that this sect attaches great significance to the ceremony of baptism, it is important to note that petitioner had not even been baptized at the time of the F.B.I. investigation. Under these circumstances, the selective service board had ample reason for disbelief in the sincerity of petitioner's convictions.

Since, however, related questions in the determination of conscientious objector claims are before this Court in *Simmons* v. *United States*, No. 251, and *Gonzales* v. *United States*, No. 69, and since the contention that petitioner was denied procedural due process in that the recommendation of the Department of Justice against his conscientious objector claim was mailed to the appeal board without notice of its contents being given to him (Pet. 8-9), is also before the Court in *Gonzales*, we suggest that action on the petition be deferred pending determination of the cases now pending.

Respectfully submitted,

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